IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE NO. 8 OF 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME-TAX, RAJKOT - Applicant(s)
Versus
SHRI MANAVADAR PATEL SAMAJ, JAMNAGAR - Opponent(s)

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Appearance :
MR. MANISH R. BHATT for Applicant(s).
NONE for Opponent(s) though served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 04/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

The Income-Tax Appellate Tribunal, Ahmedabad Bench “C”, in relation to I.T.A. No.118/Ahd/1984,

relating to Assessment Year 1980-81, has referred the following question under Section-256(1) of the Income Tax Act, 1961 ("the Act" for short) for the opinion of this Court :

> *"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the provisions of sec.13(1)(b) of the I.T. Act, 1961 were not applicable and the assessee trust was entitled to exemption as claimed?"*

2. The Assessing Officer, after going through the Trust Deed, observed that as the Trust was created after 1st April, 1962 for the benefit of a particular community or caste, the Assessee would not be entitled to the benefits flowing from Section-11 of the Act in view of the bar contained in Section-13(1)(b) of the Act. The order came to be confirmed by the Assistant Commissioner of Income-Tax on 19th October, 1988, therefore, the Assessee took up the matter before the Tribunal. The Tribunal, relying upon its earlier judgement in the matter of ***Leuva Patel Nutan Kelwani Mandal*** [I.T.A. Nos.230 and 251/Ahd/1984], decided on 9th November, 1984, held that the provisions of Section-13(1)(b) were not applicable.

3. In the matter of ***Leuva Patel Nutan Kelwani Mandal***, a reference came to be made to this Court, which was registered as ***I.T.R. No.109 of 1988***. The Division Bench of this Court, *vide* its Judgement dated 29th August, 2002, held that the provisions of Section-13(1)(b) of the Act would not be applicable and the Trust would be entitled to the benefits flowing from Section-11 of the Act.

4. The learned Counsel for the Revenue was unable to say anything contrary to the judgement in the matter of ***Leuva Patel Nutan Kelwani Mandal*** (*supra*), and other judgements, on which the earlier Division Bench had placed its reliance. In view of the earlier decision of the Court and the facts of the present case, we are unable to hold in favour of the Revenue. The question is answered against the interest of the Revenue. The Reference stands disposed of. No costs.

[***R.S.Garg, J.***]

[***D. H. Waghela, J.***]

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